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PART II—Section 3

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No. 133] NEW DELHI, WEDNESDAY, MAY 2, 1956

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 23rd April 1956

S.R.O. 1017.—WHEREAS the election of Shri Boyina Rajayya, as a member of the Legislative Assembly of the State of Andhra, from the Salur constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gadipalli Perayya, resident of Kadirivalasa, Salur Taluk, Chicacole District;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, ELURU (ANDHRA)

PRESENT

Sri G. Nagireddy, B.A., B.L.,—*Chairman.*

Sri C. Narasimhacharyulu, B.A., M.L.,—*Member (Judicial)*

Sri M. Sitaramaiah, B.A., B.L.,—*Member (Advocate).*

Friday, the 6th day of April, 1956

ELECTION PETITION NO. 7 OF 1955

Between:

Sri Gadipalli Parayya—*Petitioner.*

And

1. Sri Boyina Rajayya.
2. Sri Dippala Suri Dora.
3. Sri Allu Eruku Naidu.
4. Sri Andra Rama Prataparao Bahadur (died).
5. Sri Balaga Narayana.
6. Sri Kunichetty Venkata Narayana Dora.
7. Sri Kota Appala Naidu.
8. Sri Marupina Narayana Naidu.
9. Sri Raja Pusapati Satyanarayaneswara Kratadugaraja Bahadur.
10. Sri Sankaravamsam Suryanarayana Jeeva Deo—*Respondents.*

Petition dated 6-5-1955 under Section 81 of the Representation of the People Act, 1951 to declare the petitioner to have been elected to the Reserved Seat from the Salur Constituency to the Andhra Legislative Assembly under Section 54(2) of the Representation of the People Act, or to declare the election to be wholly void under Section 100 of the said Act and for costs of the petition.

This Election Petition coming on for final hearing before this Tribunal on 14-3-1956, upon perusing the petition, counters and other material papers on record, upon hearing the arguments of Sri T. Suryanarayana, advocate for the petitioner, Sri K. Sarveswara Sastry, advocate for the 1st respondent, Sri Ch. Parasuram Naidu, Advocate for the respondents 2 and 3, Sri S. Madhusudhanarao, advocate for the 6th respondent, respondents 5, 7 to 10 being absent and set *ex-parte*, 4th respondent having died during the pendency of the petition and having stood over to this day for consideration, the Tribunal delivered the following:

ORDER

1. This is a petition filed under Section 81 of the Representation of People Act to have the election to the Andhra Legislative Assembly from the Salur Constituency in the Srikakulam District set aside. This is a double member constituency, one of the seats in which is reserved for Scheduled Tribes. The petitioner and respondents 1 and 2 were nominated to the reserved seat while respondents 3 to 10 were nominated to the general seat. The election was held on 18-2-1955 and 1st respondent was declared elected to the Reserved seat while the 3rd respondent was declared elected to the General seat. The result was duly notified in the Official Gazette, dated 11-3-1955.

2. The petitioner challenges the election on the following grounds. He alleges that neither the 1st nor the 2nd respondents are members of the Scheduled Tribes, that the 1st respondent and his fore-fathers embraced Christianity, that the 1st respondent is an Indian Christian not only by religion but by birth also, that the 1st respondent's family adopted new customs and habits renouncing the native customs and habits of the Scheduled Tribes and that the 2nd respondent is a kshatriya by birth and a Dwija under Hindu Law and is not a member of the Scheduled Tribe. At the time of scrutiny of the nominations by the Returning Officer, the petitioner raised the necessary objection about the validity of the nomination papers of respondents 1 and 2. The Returning Officer, being bound to decide then and there under Section 36(2) of the People Act all objections raised at the time of scrutiny, erroneously postponed his decision till the time of counting of votes and ordered a poll to be taken. This has materially affected the result of the election. As his nomination for the reserved seat is the only valid nomination, he ought to have been declared elected to the reserved seat. The petitioner has, therefore, prayed (1) that he may be declared to be elected to the reserved seat for the Salur Constituency or (2) to declare the election to be wholly void under Section 100 of the Representation of People Act as the election has been materially affected by the improper acceptance of the nominations of respondents 1 and 2.

3. The 1st respondent contended that he belongs to a Scheduled Tribe called '*Konda Dora*', that Scheduled tribes are free to profess any religion and that religion does not disqualify any one to belong to the Scheduled Tribe, his fore-fathers had not embraced Christianity, that they are Hindus belonging to the *Kondadora* tribe. 1st respondent embraced Christianity only in his 10th year. His wife and father-in-law are Konda Doras. His other relations are also Konda Doras and they all treat him as one of their tribe. It is not true that he or his family members renounced the native customs and habits of their tribe. The question of residence has no relevancy as to whether a person belonged or not to the scheduled tribe. In fact, petitioner himself is a resident of Kadirivalasa which is in a plains area. The 1st respondent further contended that the Returning Officer in spite of the objections of the petitioner accepted his nomination on the day of the scrutiny after considering the evidence procured by the 1st respondent. The petitioner did not place any material before the Returning Officer to substantiate his objections and as such the nomination of the 1st respondent was properly accepted. The observations of the Returning Officer in the order passed by him on the day of scrutiny on the objection petition of the petitioner to the effect that the petitioner can raise these objections at the time of counting are superfluous and have no legal validity. The enquiry made at the time of counting is a legal nullity and has not affected the validity of the acceptance of his nomination paper It is further contended that the petitioner cannot claim alternative reliefs in the prayer portion of his petition and that he must confine himself to only one of them. The acceptance of the nomination

paper is not improper nor has such acceptance materially affected the result of the election. There was no non-compliance with the provisions of the Constitution or of the Representation of the People Act or Rules thereto. The 1st respondent further contended that the petition has not been duly verified as required under Order 6, rule 15 of the Civil Procedure Code and as such is liable to be dismissed *in limine* under Section 90(4) of the Representation of the People Act.

4. The 2nd respondent contended that he is not a Kshatriya, but he is a member of a tribal community called *Muka Doras* recognised as one of the Scheduled Tribes under the Constitution (Scheduled Tribes) Order 1950 and that the acceptance of his nomination was legal and proper. In all other respects, he supported the other pleas of the 1st respondent.

5. The 3rd respondent is the returned candidate for the general seat. He supported the 1st and 2nd respondents in all material contentions. He further contended that in any view of the case his election to the general seat is not in any way affected whatever may be the disputes in regard to the reserved seat and that his election to the general seat cannot be questioned in this petition. He also contended that on account of the order of the Returning Officer regarding the reserved seat, there was no prejudice caused to any candidate in the electioneering campaign and as such the election cannot be declared to be wholly void.

6. The 6th respondent filed a counter supporting the petitioner. He is one of the defeated candidates for the general seat. While reiterating all the contentions of the petitioner he added that on account of the wrong order of the Returning Officer, there was a state of suspense among the electorate as to which seat the 1st and 2nd respondents would be finally permitted to contest and that this has caused much prejudice to him. The 1st respondent is the Congress Official candidate for the reserved seat while he was the Congress candidate for the general seat. On account of the wrong order of the Returning Officer, it was not clear as to whether the 1st respondent was being permitted to contest the reserved seat or the general seat. There was confusion among the voters as to whether both 1st respondent or 6th respondent were contesting the general seat or whether 1st respondent was contesting the reserved seat and 6th respondent the general seat. This has materially affected the result of the election. He, therefore, urges that the entire election should be declared void including that of the 3rd respondent.

7. Respondents 5, 7 to 10 remained *ex-parte* and respondent No. 4 died during the pendency of the petition.

8. On the pleadings raised by the parties, the following issues were framed for determination:

(1) Whether the respondents 1 and 2 are not members of the Scheduled Tribes?

(2) Whether the Returning Officer made any enquiry regarding the objections raised to the nominations of respondents 1 and 2 at the time of scrutiny under Section 36, clause (2) of the Representation of People Act and if not, what is the effect of his accepting the nominations of respondents 1 and 2?

(3) Whether the petitioner can claim alternative reliefs, if not, which relief he elects to choose?

(4) Whether the election of the 3rd respondent can be questioned in this election petition and if so, is the election void?

(5) Whether the verification to the petition is proper?

(6) Whether the election is materially affected for all or any of the reasons mentioned in the petition?

(7) To what relief is the petitioner entitled?

9. *Issue* 5.—Subsequent to the framing of issues, the petitioner filed I.A. 4 of 1956 for amendment of the verification to the original petition. We allowed the amendment by order, dated 30-1-1956. It has been held in *Bhikaji Keshao Joshi and another* vs. *Brizlal Nandalal Biyani and others* (1) and in *A. S. Subbaraj* vs. *M. Muttayya and others* (2) that such an amendment is permissible. In

(1) A.I.R. 1955 Supreme Court, page 610.
(2) A.I.R. 1954 Madras, page 336.

view of the amendment, this issue does not now arise. The respondents have not also pressed this issue. We accordingly find this issue in favour of the petitioner.

10. *Issue* 3.—The petitioner has claimed in his petition that he may be declared to have been elected to the reserved seat for the Salur Constituency or in the alternative to declare the election to be wholly void. It is contended by some of the respondents that under Section 84 of the Representation of the People Act the petitioner must claim only one of the declarations mentioned therein and that he cannot claim his reliefs alternatively. This question has been the subject matter of a recent decision of the Madras High Court in *Dr. V. K. John and another* vs. *G. Vasanta Pai and another* (3) His Lordships Rajamannar C.J., has held therein as follows:—"Section 81 permits an election petition on one or more of the grounds specified in these several provisions. There is nothing, therefore, to prevent an election petitioner from alleging in the same petition grounds some of which would fall within sub-section (1) and others under sub-section (2) of Section 100. If so, it follows that the election petitioner may pray for more than one relief. What, however, is clear is that the Tribunal can actually grant only one of these two reliefs or dismiss the entire petition under Section 98 of the Act. The language, namely, "A petitioner may claim any one of the following declarations" is not inconsistent with the petitioner claiming any one of the three alternatively. That this must be so will become evident by reference to a case where the petitioner not only seeks to set aside the election of the returned candidates but claims that he should be declared duly elected. In such a case cannot the petitioner claim relief (b) in the first instance and in the alternative relief (a)? Obviously he can. The petitioner can claim that even if he cannot be declared duly elected, the election of the returned candidate may be declared void. It would be for the Tribunal to give t e appropriate relief. Otherwise, a most absurd result will follow. If the argument on behalf of the appellants were to be accepted in such a case, the petitioner will be compelled to choose either relief (a) or relief (b)". In view of this decision, we hold that the petitioner can claim one or other of the reliefs mentioned in Section 84 alternatively. There is no need for the petitioner to choose only one of the reliefs mentioned therein. It would be for the Tribunal to give the appropriate relief after considering all the facts and circumstances in the case. We, therefore, find this issue in favour of the petitioner.

11. *Issues* 1 *and* 2.—These are the most important i sues in the case. In considering these issues, it is nece sary to state at the outset some of the admitted facts. The date fixed for the receipt of nomination papers to this constituency was 3-1-1955. The date fixed for scrutiny was 7-1-1955. Petitioner and respondents 1 and 2 filed their nomination papers for the reserved seat while the remaining respondents filed their nomination papers to the general seat. Exs. A9 to A11(b) are the nomination papers for the re'erved seat of the petitioner and respondents 1 and 2. On the day of the scrutiny, *i.e.*, 7-1-1955, the petitioner filed two objection petitions before the Returning Officer not to accept the nomination papers of respondents 1 and 2 on the main ground that they are not members of the Scheduled Tribe and as such, they were not qualified to contest the reserved seat. These objection petitions are the originals of Exs. A3 and A1 respectively. The Returning Officer passed orders on the same day on these two petitions (*Vide* Exs. A4 and A2). The order is the same on both these petitions. It runs as follows: "Heard arguments of the learned Pleader for the candidate Sri Gadipalli Parayya. At this stage no impediment can be attached to nomination on the grounds raised in this petition. They can be raised, if any, at the time counting the votes before the declaration of the results under Section 54 of the Representation of the People Act, 1951. The petition is dismissed". While passing this order, he accepted the nomination of respondents 1 and 2. The poll was taken on 18-2-1955 and the counting took place from 2-3-1955. On the date of counting, the petitioner filed another objection petition against the acceptance of the nominations of both respondents 1 and 2 under the original of Ex. A5. The Returning Officer after hearing both sides pa-sed orders on 4-3-1955 under the original of Ex. A6. Therein he overruled the objection raised by the petitioner and dismissed the petition. He later declared that 1st respondent was elected to the reserved seat and 3rd respondent to the general seat.

12. The contentions of the petitioner are two-fold. Firstly, that respondents 1 and 2 are not members of the Scheduled Tribe and as such their nomination papers were improperly accepted by the Returning Officer. Secondly that the

(3) A.I.R. 1956 Madras page 85.

Returning Officer did not decide the objections raised by the petitioner on the day of scrutiny, then and there, but postponed the decision to the date of counting that this is a flagrant violation of the mandatory provisions of Section 36(2) of the Representation of the People Act, and that as such the result of the election is materially affected. He contends that even if we were to hold in this enquiry that respondents 1 and 2 are members of the Scheduled Tribe, yet by the non-compliance of the mandatory provisions of the Representation of the People Act by the Returning Officer the result of the election is automatically affected materially and as such it has to be declared void under Section 100(2)(c) of the Representation of the People Act The first contention comes under issue 1 and the second under issue 2.

13. We will now deal with the first contention, *viz.*, whether respondents 1 and 2 are not members of the Scheduled Tribe. The burden lies heavily on the petitioner to prove this contention. It is the case of the petitioner that 1st respondent is now an Indian Christian, that his father and fore-fathers have also embraced Christianity, that they have renounced the habits and customs of the Scheduled Tribes and that 1st respondent is no longer a member of the Scheduled Tribe. He also contends that the 2nd respondent is a kshatriya and is being treated as a kshatriya by all and that he is not a member of the Scheduled Tribe. The case of 1st respondent is that he is a Konda-dora, that his fore-fathers and all other members of his family are also konda-doras, that he or his other members of his family have not given up any of the tribal habits or customs, that they are treated by all as members of the konda-dora tribe, that religion has no place in determining whether an individual belonged to a particular Tribe or not and that in spite of his conversion to Christianity, he did not cease to be a member of the Tribe to which he belonged. The 2nd respondent contends that he is a member of the Muka-Dora Tribe and not a Kshatriya. In Part V of the Schedule to the Constitution (Schedule Tribes) Order 1950 relating to the Madras Composite State, item 19 mentions Konda-doras and item 30 Muka-Doras as being Schedule Tribes.

14. In support of his contention that respondents 1 and 2 are not members of the Scheduled Tribe, petitioner has examined P.Ws. 1 to 4 and has also relied upon Exs. A8, A8(a), A12 and A13. P.W. 1 is the petitioner himself. He deposed that 1st respondent is not a konda-dora and 2nd respondent is not a Muka-Dora, that among the Scheduled Tribes at the time of marriages husbands tie the *tali* to the bride, that they are Hindus by religion and observe all Hindu customs, that when a person of their tribe dies his dead body will be burnt but not buried and that if any of the tribesman takes to Christianity, he is ex-communicated from their tribe. During cross-examination, he stated that there are no cases of conversion to Christianity in the *Gadaba* tribe to which he belonged, that he personally does not know of any case in Konda-Doras or Muka-Doras where if any one of those tribes took to Christianity, he was ex-communicated from the tribe. He is not able to give the name of a single individual who was so ex-communicated. No particulars of any customs which are observed by Konda-Doras or Muka-Doras and which are not being observed now by respondents 1 and 2 were given by P.W. 1. His evidence is very general and vague. P.W. 2 belongs to Konda-dora Tribe. He deposes in a general way that if any one of their tribe takes to Christianity he would be ex-communicated and that there would be no inter-marriages with them. When asked to give any specific instance, he said that he does not know any one in that tribe who was ex-communicated for the reason that he took to Christianity. P.W. 3 deposed that he is a Konda-Dora residing at Peda Cheepuruvalasa and that in his tribe Gannala Balaji and Pandi Arlamma belonging to another village, *viz.*, Gangannadoravalasa took to Christianity and hence were ex-communicated. He admits that his own wife is the daughter of one Pandi Venkataswami, who became a convert even during his childhood. This belies the contention that there would be no inter-marriages between Christian converts and other members of the Tribes or that there would be ex-communication if any members of the Tribe took to Christianity. The evidence of P.Ws. 1 to 3 is very vague and indefinite. We are not also impressed with their credibility. No person who was actually ex-communicated on account of conversion to Christianity was examined. No tribal elders were examined to speak of any such instances. No specific cases of non-observance of any tribal customs by 1st respondent are alleged or proved. Petitioner has examined P.W. 4 to prove that the 2nd respondent is a kshatriya. P.W. 4 is a purohit by profession. He says that he is a family purohit of 2nd respondent, that he officiated at the marriage ceremony of 2nd respondent's brother's son, that 2nd respondent's brother's son was married into the family of Chadapusapati people, that the mokhasadar of Pachipenta also bears the same surname, that all of them are related to each other and that

they are all Kshatriyas. He also deposed that 2nd respondent and his family members wear sacred-threads and that he would be going to their houses on every Sravana Powrnami day for renewing the sacred-threads. Coming to the documentary evidence, Ex. A8 is the Fort St. George Gazette, dated 28-5-1940 containing the notification showing the names of candidates who have passed the T.S.L.C. examination held in March 1940. Ex. A8(a) is the entry relating to the 1st respondent bearing Serial No. 9985. Against this entry the letter "C" is inserted which means that he is an Indian Christian. It is not denied by the 1st respondent that he is now an Indian Christian. He admitted that he became an Indian Christian when he was 10 years old for purpose of his education. The question for consideration in this case is not whether 1st respondent is a Christian or not but whether his conversion to Christianity removed him from the fold of the tribe to which he belonged. We will consider this aspect of the case later. Ex. A12 is the electoral roll for Janni-valasa village in Salur taluk. Serial Nos. 221 and 223 relate to the brothers of 1st respondent. Their father's name is noted as Souryappa. No. 218 relates to 1st respondent. His father's name was originally noted as Sowryappa but he later got it corrected prior to the publication of Electoral Rolls, as Yerakam Dora. It is argued for the petitioner that 1st respondent's father's name is also Souryappa and that Sowryappa is a Christian name and that, therefore, 1st respondent' father is also a Christian. There is not evidence to show that Souryappa is a Christian name. Petitioner himself has given in his petition 1st respondent's father's name as Yerakam Dora and not Souryappa. The petitioner does not know personally whether 1st respondent's father is a Christian or not. None of the witnesses for the petitioner spoke that 1st respondent's father is a Christian. 1st respondent in his evidence stated that the entry in electoral roll against the name of his brothers that the father's name is Sowryappa is wrong. Ex. A12 is therefore, of not much use to the petitioner. Ex. A13 is a usufructuary mortgage bond executed by the 2nd respondent and his brother in favour of others. Therein the 2nd respondent was described as a Mokhasadar and Kshatriya. Ex. A14 is the voters' list of Sarika village for 1952. Ex. A14(a) is the entry relating to 2nd respondent. Therein he was described as a Kshatriya.

15. The 1st respondent has examined R.Ws. 2, 3, 4, 6 and 10 and filed Exs. B1 to B8, B17, B37 to B39 and B42 to B47 to prove that he belongs to the Konda-Dora tribe. R.W. 2 is the Junior paternal uncle of the 1st respondent. He deposes that he is a Konda-Dora, that the 1st respondent became a convert in his 10th year, that he is not a convert, that the 1st respondent's father or grandfather are not converts, that the 1st respondent was not ex-communicated because of his conversion to Christianity and that there was no such custom in his tribe. He gave instances in his evidence where husbands are converts but their wives and children are not. He also said that converts and non-converts in his tribe observe the same customs and habits. Exs. B3, B5, B8 and B6 are documents executed by him in favour of different persons. In all of them he described himself as Konda-Dora R.W. 3 is a Konda-Dora and is related to be 1st respondent. He deposed that the 1st respondent was ex-communicated from the tribe. He is himself not a convert. He is the nephew of P.W. 2. R.W. 4 is also a konda-dora. 1st respondent's daughter is married to his son. Neither his son nor his daughter-in-law are converts. There is inter-dining between them and the 1st respondent. He deposes that the 1st respondent was not ex-communicated. R.W. 6 is the village munsif of a group of villages of which Jannivalasa is one. He produced Exs. B37, B38 and B39. Ex. B37 is a vaccination register of 1950-54. Ex. B-37(a) is the entry relating to the 1st respondent's son showing that he was vaccinated in 1954. He was described therein as Konda-Dora. Ex. B38 is a register of births for 1952-53. Ex. B38(a) is the entry relating to the birth of a son to the 1st respondent on 22-8-1953. Here also the 1st respondent was described as Konda-Dora. Ex. B-39 is a death register for 1954. Ex. B-39(a) is the entry relating to the death of 1st respondent's mother. Therein his mother was described as belonging to Konda-dora tribe. He further deposed that there would be no ex-communication among Konda-Doras even if any one of them took to Christianity. R.W. 10 is the petitioner himself. He proved Exs. B-42 to B-46. They are registered documents executed in favour of himself and his father by others. In all these documents 1st respondent and his father were described as Konda-Doras. The executants of these documents were also described therein as Konda-Doras. Ex. B47 is another registered document executed in favour of 1st respondent's wife. She was described therein as belonging to Konda-Dora tribe. R.W. 10 further deposed that he became a Roman Catholic Christian in his 10th year for educational purposes, that his wife and daughter are not Christians, that his marriage was performed according to the tribal customs and habits and not in a Church, that his daughter was married to the son of R.W. 4, who is not a

convert, that the corpse of his paternal uncle who was a convert was burnt but not burried and that amongst Roman Catholics except prayers all other original customs of the converts would be observed. He further said that he wrote in his counter that himself and his fore-fathers were Hindus and what he meant thereby was that they were not Christians. He also deposed that his father's name was not Souryappa but Yerakan Dora and his grand-father was one Ramam-Dora and that R.W. 2 is his paternal uncle. Exs. B1, B2 and B4 are registered documents executed by Ramam-Dora, the grand-father of the 1st respondent. Ex. B3, B5, B-6, B 7 and B8 are documents executed by Buchanna Dora, the paternal uncle of the 1st respondent. In all these documents. the executants were described as Konda doras. Exs. B-42 to B-46 are documents executed in favour of the 1st respondent and his father. In these documents, 1st respondent and his father as well as the executants were described as Konda Doras. These documents show that other Konda Doras were treating the 1st respondent and his father as one amongst their tribe.

16. The 2nd respondent has examined on his side R.Ws. 5 and 7 and filed Exs. B-10 to B-16, B-18 and B-19 to prove that he belongs to the Scheduled Tribe called *'Muka Doras'*. R.W. 5 is a karnam living in Kurukuti village which is one mile from Sarika, the residential village of the 2nd respondent. His paternal uncle is the karnam of Sarika village He proved Exs. B-13, B-14, B-15 and B-16. His late father Vaddadi Appala Narasayya, is the scribe of these documents. Ex. B-19 is another document written by him. Vaddadi Sanyasi is his junior paternal uncle and he wrote Ex. B-10. He also deposed that the 2nd respondent is the grand-son of the executant of Ex. B-10. He said that the 2nd respondent is Muka-Dora and not a Kshatriya, that he attended to the marriages and other ceremonies in the house of the 2nd respondent and his father, that all the Mukadoras in the village attended to these functions that the 2nd respondent's sister was married to the Mokhasadar of Mamidipalli and that the latter's sisters were married to the 2nd respondent and his brother. The mokhasadar of Mamidipalli is also a Muka Dora. He further deposed that his late father was the scribe of the original of Ex. B-18. R.W. 7 is the 2nd respondent himself. He is the Mokhasadar of Sarika which consists of a group of 18 villages. He is related to the Mokhasadars of Pachipenta and Mamidipalli. They also are Muka Doras. He deposed that he is not a kshatriya, that on account of his being a mokhasadar and richer than the other members of the Mukodora tribe, the persons working under him and others would call him as Rajas or Kshatriyas, that for the last 10 or 15 years he and his family members were also wearing the sacred threads. He further deposed that Mallu Dora, Bhimanna Dora, Ganganna Dora and Suri Dora referred to in the documents filed by him are members of his family, that for all functions in their family all Mukadoras would be invited and that they also would attend the functions in other families of Muka Doras. He denied that P.W. 4 ever officiated as a priest in his house or that of his father-in-law. He said that Brahmin priest would not be invited at any ceremonies in their houses and that Muka Doras alone would get such ceremonies performed. Exs. B-10, B-12, B-13, B-14, B-15, B-16, B-18 and B-19 are all registered documents in which the family members of the 2nd respondent were described as belonging to Muka Dora Tribe. Ex. B-11 is a Judgment of the District Munsif's Court, Parvatipur in O. S. No. 439/1890 in the long cause title of which Dippala Bhimanna Dora, the fore-father of the 2nd respondent was described as *Konda Dora*.

17. The 6th respondent examined himself as R.W. 9. He deposed that during the District Board elections in 1939 he contested the elections on the Congress ticket, that the 3rd respondent opposed the Congress candidate in the said election, that he was successful and that the 3rd respondent was defeated. In 1952, he contested the Legislative Assembly elections on behalf of the Krishik Lok Party, that the 3rd respondent was his rival therein as representing the Congress and that he was successful in the said election defeating the 3rd respondent. He further deposed that he contested the present election as a member of the United Congress Party and that the 3rd respondent had contested this seat on the Praja Socialist Party ticket, that on account of the Returning Officer postponing his decision on the objections raised by the petitioner to the nominations of the 1st respondent and the 2nd respondent, he could not canvass enthusiastically and that on account of the postponement of the decision by the Returning Officer, he lost his election. It was suggested in his cross-examination that his failure in the election was due to his unpopularity among the electorate due to his frequent changes in his political creeds.

18. This, in brief, is resume of the material evidence oral and documentry—in the case. There is overwhelming evidence to show that the 1st respondent is a member of Konda Dora Tribe. Apart from the oral evidence of R.Ws. 2, 3,

4, 6 and 10, a number of registered documents were filed wherein the 1st respondent and his family were described as Konda Doras. Their genuineness is not impeached by the petitioner. Exs. B-1, B-2 and B-4 were executed by the grandfather of the 1st respodent. Exs. B-3, B-5 to B-46 were executed by the paternal uncle of the 1st respondent. Exs. B-42 to B-46 were executed in favour of the 1st respondent and his father by other Konda Doras. Exs. B-47 is executed in favour of the 1st respondent's wife. These documents are of different periods ranging between 1909 and 1953. Exs. B-37(a), B-38(a) and B-39(a) which are entries in public documents show that the 1st respondent is a Konda Dora. There is therefore no doubt that the 1st respondent belonged to the Konda Dora Tribe. It is also not the case of the petitioner that the 1st respondent did not belong to the Scheduled Tribe. In para 5 of his petition the petitioner stated "They (1st respondent and his fore-fathers) adopted new customs and habits renouncing the native customs and habits of the Scheduled Tribes". There is therefore a tacit admission by the petitioner that the 1st respondent originally belonged to the Scheduled Tribe but that later he and his fore-fathers embraced the Christian Faith and renounced their tribal customs and habits.

19. Therefore the prime question for consideration is whether the 1st respondent by embracing the Christian faith has ceased to belong to Scheduled Tribe to which the originally belonged or renounced his tribal customs and habits. There is absolutely no evidence to show on the side of the petitioner that the 1st respondent's father or his fore-fathers ever embraced the Christian faith. Petitioner and his witnesses were not able to say whether the 1st respondent's father was a Christian or not. There is positive evidence on the side of 1st respondent that his father or his grandfather were not Christians and that the 1st respondent embraced the Roman Catholic faith when he was 10 years old for purposes of his education. Except the vague evidence of P.Ws. 1 to 3 that if there is a conversion to Christianity by any member of the tribe he would be excommunicated by the tribesmen, not a single instance of that kind has been spoken to. No man who has been subjected to any such excommunication was examined. No caste elders of the tribe have been examined to prove such a custom. On the other hand the evidence of R.Ws. 2 to 6 and 10 discloses that the converts and the tribesmen observe the same customs and habits, that there are inter-marriages between converts and tribesmen and that no excommunication of the 1st respondent ever took place. Taking the case of the 1st respondent himself, his own wife is not a convert to Christianity. He married his daughter to R.W.4's son who is not a convert. Exs. B-42 to B-46 also show that other Konda Doras in the village were treating him as one of their tribe and that was why they described the 1st respondent as a Konda Dora in these documents. We are therefore of opinion that the 1st respondent despite his conversion to Christianity, continued to be a member of the tribe to which he originally belonged and that he did not renounce any of his tribal customs. In this conclusion we are fortified by the decision reported in *Chaturbhuja Vithal Das Jasani* vs. *Moreshwar Parsuram and others* (4) wherein their Lordships have held that in deciding the effect of conversion to another faith "there are three factors which have to be considered. (1) the reactions of the old body (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate a convert and the individual himself desires and intends to retain his old sicial and political ties the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardy matter. The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to his tenets but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from the new as opposed to purely spiritual advantage."

20. It has been argued by the learned Advocate for the petitioner that by mere acceptance of the Christian faith by any member of the Scheduled Tribes, he would *ipso facto* cease to be member of that Tribe but we do not accept his argument. Under Article 341 clause (1) of the Constitution of India, the President has promulgated the Constitution (Scheduled Castes) Order 1950. Under Article 342 clause (1) of the said Constitution the President has also promulgated the Constitution (Schedule Tribes) Order 1950. Section 2 in both these orders states that the castes or tribes specified in the schedules appended to each order shall in relation to the States mentioned therein be deemed to be Scheduled Castes or Scheduled Tribes. Section 3 of the Constitution (Schedule Castes) Order 1950

(4) 1954 Supreme Court, page 236 at 244.

runs as follows:—"Notwithstanding anything contained in paragraph 2 no person who professes a religion different from Hinduism shall be deemed to be a member of a scheduled caste". There is no corresponding provision like this in the Constitution (Scheduled Tribes) Order 1950. This omission is very significant. Under the Constitution (Scheduled Castes) Order 1950, religion plays an important part and no person who professes a religion different from Hinduism can claim to be a member of the Scheduled Caste. Under the Constitution (Scheduled Tribes) Order 1950, religion plays no part. It is on account of their primitive customs and habits and their uncivilised life that a political concession was given to the tribal people. To whatever religious faith he belonged to, if he is a member of the tribe mentioned in the schedule attached to the order, he would be entitled to the political concession given under the constitution. But in the case of Scheduled Castes a proviso has been added by which it is incumbent upon the individual who wants to claim to be a member of the Scheduled Caste that he should profess only Hinduism. There is no such reservation in the case of Scheduled Tribes. In Webster's Dictionary 'Caste' has been defined as "Hereditary classes of Hinduism", and "Tribe" has been defined as "a nation of savages or uncivilised people". The definitions also show that in the case of castes, religion is the crux of the matter whereas in the case of tribes barberity and uncivilised nature play a prominent role. Professing a particular religious faith therefore does not prevent a tribesman from continuing to be in the tribe to which he belonged.

21. It has been further argued by the learned Advocate for the petitioner that the words "parts of or groups within" have to be given great emphasis in deciding whether a person is or is not a member of the Scheduled Tribe. The argument advanced is that if 'Parts of' or 'groups within' the tribe enumerated in the schedule attached to the Scheduled Tribes Order adopt a new religious faith, they must be deemed to have seceded from that tribe and that they are therefore not governed by this order. In other words since the 1st respondent and some of his family members have embraced Christian faith, they must be deemed not to have belonged to Konda Dora tribe. This argument is fallacious for two reasons. Firstly, as we stated above religion plays no part in deciding whether a person belonged to a Scheduled Tribe or not. Secondly, 'parts of' or 'groups within' do not apply to stray or isolated instances in the tribe. In the schedule attached to the order, the names of the tribes which are governed by this order have been specifically mentioned. Nobody except the President has got the power either to add to or subtract from the schedules. This Tribunal has no jurisdiction to decide whether any part or group of the Tribe mentioned in the schedule is or is not a Scheduled Tribe governed by the order. If really any part or group of the tribe mentioned in the schedule ceased to belong to that tribe it is for the President after consultation with the Governors concerned to amend the schedules attached to the order. We have no power to dissect a tribe mentioned in the schedule into parts or groups and say that they do not belong to that tribe. A perusal of the schedules also shows that in some cases the entire tribe is not treated as a Schedule Tribe. Some groups or parts of a whole tribe are treated as Scheduled tribes. It is with reference to such cases alone that the words "parts of" or "groups within" have been used in Section (2). As stated above, if there are any exceptional instances in any locality, it is for the President to take note of them and promulgate the same in his order. A number of cases have been cited at the Bar to show that where non-Hindus have sufficiently Hinduised themselves and have adopted openly the customs and manners of the Hindus professing the Hindu faith, Hindu Law would then be applicable to them. These decisions have no direct bearing to the instant case. There is no question of applying any personal law in this case. On a question of fact we have held that on account of his conversion to Christianity, the 1st respondent did not renounce any of his tribal customs or habits or cease to be a member of the tribe to which he originally belonged. We, therefore, hold that the 1st respondent belongs to the Scheduled Tribe of Konda Doras and that his conversion to Christianity cannot remove him out of the Tribe.

22. Now coming to the case of the 2nd respondent whether he belongs to the Scheduled Tribe of Muka Doras or whether he is a Kshatriya, the evidence relied upon by the petitioner is unsatisfactory. P.W. 1 is the petitioner himself. He has no personal knowledge and does not know any of the relations of the 2nd respondent. He admits that the 2nd respondent is a mokhasadar. P.W. 4 is a Brahmin Purohit. He says that he officiated at the marriage ceremony of the 2nd respondent's brother's son, who was married to Chadapusapati people, that the mokhasadar of Pachipenta has also got the same surname, that the Momhasadar

of Pachipenta is a Khsatriya and that, therefore, the 2nd respondent must also be a kshatriya. He assumes that Pachipenta Mokhasadar is a kshatriya.

23. Ex. A7 is the public copy of the deposition of the 2nd respondent in C.C. 316/52 on the file of the Sub-Divisional Magistrate, Parvatipur. It was noted therein as Kshatriya. The actual sworn testimony of the witness starts only after the form as regards name, caste, age, etc. are filled up. Much importance cannot be attached to this. Ex. A 14(a) is the entry in the electoral register of 1952 wherein the word Kshatriya was noted against the 2nd respondent's name. These entries are made on information obtained from others and not necessarily from 2nd respondent. Ex. A-13 is a usufructuary mortgage bond, dated 13-6-1928 wherein the 2nd respondent was described as Mokhasadar, Kshatriya and as Raju Sree. For the reasons stated by us in para 24 *infra*, Ex. A-7 and A-13, A-14(a) do not outweigh the other documentary evidence in the case.

24. As against this evidence, there is the evidence of R.Ws. 5 and 7 and Exs. B-10 to B-16, B-18 and B-19. R.W. 5 is known to the 2nd respondent's family from a long time. He worked for him in a litigation between the 2nd respondent and the Maharajah of Jaypore. He speaks to his having attended many marriages in the 2nd respondent's family, that all the Muka Doras in the neighbourhood attended to those functions, that the 2nd respondent's sister was married to the Mokhasadar of Mamidipalli who is a Muka Dora, that the latter's sisters married the 2nd respondent and his brother, that the 2nd respondent is also related to the Mokhasadar of Pachipenta, who is also a Muka Dora that because of their wealth these mokha adars are being called by others as Rajas and Kshatriyas for the last 20 or 25 years and that they are also wearing sacred threads. R.W. 7 is the 2nd respondent. He deposed that he is a Muka Dora and not a Kshatriya, that in recent years on account of his being a Mokhasadar and richer than other Muka Doras he is called Kshatriya or Raja, that he is related to the Mokhasadars of Mamidipalli and Pachipenta who are also Muka Doras, that in all documents of title he and his fore-fathers were described only as Muka Doras and that they observe all the customs and habits of Muka Doras. Exs B-10, B-12, B-13 to B-16, B-18 and B-19 are registered documents in which the 2nd respondent's family members were described as Muka Doras. Ex. B-11 is the judgment in O.S. No. 439/1890 District Munsif's Court, Parvatipur wherein the 2nd respondent's fore-father was described as Konda Dora. Exs. B-10 to B-16 are very ancient documents ranging from 1885 to 1912. Ex. B-18 is also of the year 1922. Exs. B-16, B-18 and B-19 are in favour of the 2nd respondent while the others are in favour of his ancestors. The earliest documents describe the 2nd respondent and their family members as Muka Doras only and not as Kshatriyas. Ex. A-13 relied on by the petitioner is of the year 1928 wherein the 2nd respondent was described as Kshatriya. But in Ex. B-19 which is of the year 1936 and much later than Ex. A-13 the description of the 2nd respondent was only as Muka Dora. Ex. A-7 and A-14(a) are of the year 1952. It was admitted by the 2nd respondent that in recent years, on account of the wealth and status as Mokhasadars, he and similar Mokhasadars like the Zamindars of Mamidipalli and Pachipenta were being called by others as Kshatriyas. This might have been the reason why the 2nd respondent was described as Kshatriya in Exs. A-13, A-7 and A-14(a). There is overwhelming documentary evidence to show that the 2nd respondent originally belonged to Muka Dora Tribe. There is no evidence to show that he or his family members ever renounced their tribe or their tribal customs or habits. Merely because some people call the 2nd respondent as Kshatriya, or in some stray documents, he was described as Kshatriya, he would not cease to be a Muka Dora. It was argued that in Ex. B-11 the ancestors of the 2nd respondent were described as Konda Doras and not as Muka Doras and that therefore the 2nd respondent could not be a Muka Dora. In Thurston's book on "Castes and Tribes of Southern India", Volume V, at page 103, Muka Doras were described as follows: "Muka Dora:—Muka is recorded, in the Madras census Reports, 1891 and 1901, as a sub-division and synonym of Konda Dora and I am informed that the Muka Doras, in Vizagapatam, hold a high position, and most of the chiefs among Konda Doras are Muka Doras". This must have been the reason why in Ex. B-11 which is of the year 1892, the 2nd respondent's fore-fathers were described as Konda Doras. The main ground on which the petitioner relied in proof of the 2nd respondent being a kshatriya is that he has marriage-alliance with the Zamindars of Pachipenta and Mamidipalli and that the latter are Kshatriyas and not Muka Doras. No documentary evidence has been put in to show that the Mokhasadars of Mamidipalli and Pachipenta are not Muka Doras and that they are Kshatriyas. In the Gazetteer of Vizagapatam District at page 95 it is said that the Pachipenta

Zamindar is one of the Muka Doras. It was also noted in Thurston's book referred to above that the chiefs among the Konda Doras are called Muka Doras. Admittedly the 2nd respondent and the Zamindars of Mamidipalli and Pachipenta are Mokhasadars. There is no reliable evidence to show that the 2nd respondent never belonged to Muka Dora Tribe or that he later gave up any of the customs of that tribe.

25. It has been argued by the learned Advocate for the petitioner that the 2nd respondent, though he originally belonged to Muka Dora, has now adopted the customs and habits of Kshatriyas by wearing a sacred thread and performing the marriages according to Hindu rites and that therefore he ceased to be a Muka Dora. He relies upon *Muthuswami Mudaliar and another* v. *Masilamani and others* (5). The question that arose for decision in that case was whether a marriage between a Hindu Sudra and a convert from Christianity according to Hindu rites was valid. While holding that such a marriage was valid his Lordship Sankara Nair J. observed as follows:—"It was and is an ordinary process for a class or tribe outside the pale of castes to enter into the pale and also for the lower castes to claim recognition as belonging to a higher class. If the other communities recognise the claim, they are treated as of that class or caste". The learned Advocate for the petitioner relied upon this passage and argued that the 2nd respondent upgraded himself and became a Kshatriya. There is absolutely no evidence in this case that the Kshatriya community as a whole recognised the 2nd respondent as one belonging to their class. No Kshatriya has been examined by the petitioner. Mere wearing of a sacred thread does not make a person a Kshatriya if really he was not. On a consideration of all the evidence in the case we are of opinion that the 2nd respondent is a Muka Dora and not a Kshatriya. We, therefore, find issue 1 against the petitioner.

26. *Issue* 2.—On the day of scrutiny *i.e.*, 7th January 1955 the petitioner objected to the acceptance of the nomination papers of the respondents 1 and 2 on the ground that they are not members of the Scheduled Tribe. The Returning Officer, without deciding the matter postponed the enquiry till after the poll, holding that these objections can be raised at the time of counting and before the declaration of the results of the election. While so holding he dismissed the petitions and passed orders on the nomination papers accepting the same. (*Vide* Exs. B-34 and B-35 which are the originals of Exs. A-1 to A-4). On the date of counting another objection petition was filed Ex. A-5. The Returning Officer held an enquiry and passed a long order Ex. A-6. Section 36(2) of the Representation of the People Act runs as follows:—"The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may either on such objection or on his own motion, after such enquiry, if any, as he thinks necessary refuse any nomination on any of the following grounds:—

(a) that the candidate is not qualified to be chosen to fill the seat under the Constitution.

* * * * *

(d) that there has been any failure to comply with any of the provisions of Section 33 of Section 34".

It is argued on behalf of the petitioner that this is a mandatory provision of the Representation of the People Act and that the non-compliance of this provision vitiates the entire election. It is urged that even though the Respondents 1 and 2 do really belong to the Scheduled Tribes yet the non-decision of the objection raised by the petitioner on the day of scrutiny would *ipso facto* vitiate the election and that the further question whether the result of the election is materially affected or not does not really arise in a case of this kind.

27. There is no doubt that the action of the Returning Officer in not deciding the objections raised by the petitioner, then and there, on the day of the scrutiny is wrong. Under Section 36(2) of the Representation of the People Act extracted above, there is a specific duty cast on him to do so. If the respondents 1 and 2 were found by him as not belonging to Scheduled Tribes, they would not have been qualified to be chosen to fill the reserved seat under Section 5(a) of the Representation of the People Act and their nominations have to be rejected at once. Further under Section 34 proviso (a) in the case of election to the Legislative Assembly of a State, a candidate who belongs to the Scheduled Tribe can file his nomination by depositing only Rs. 125, whereas the other candidates have to deposit Rs. 250. Here in this case the respondents 1 and 2 have deposited only Rs. 125 claiming to belong to Scheduled Tribes. To know whether this

(5) I.L.R. 33 Madras 342 (5 I.C. 42).

deposit is proper or not it is necessary to decide whether the respondents 1 and 2 belong to the Scheduled Tribes. If on enquiry he held that they are not members of the Scheduled Tribes their nominations cannot be accepted even for the general seat because the requisite deposit has not been made in proper time. Instead of doing this, the Returning Officer erroneously thought that he can hold this enquiry after the poll and before the counting under Section 54 of the Act. He evidently seems to have thought that as this is a double member constituency, if he were to ultimately find that respondents 1 and 2 were not members of the Scheduled Tribes, he can treat them as candidates for the General seat and apply the provisions of Section 54 of the Act. This is a wrong view. Respondents 1 and 2 have applied for the Reserved seat and if they are not qualified to fill in that seat under the Constitution, there is no other alternative but to reject their nominations. The provisions under Section 54(4) of the Act do not enable the Returning Officer to postpone his enquiry to be made under Section 36(2). According to Section 54(4) after the declaration for the reserved seat has been made if the next best reserved candidate has polled the largest number of votes than all the other candidates including those for the General seat, then he should be declared to be elected to the General Seat. This does not mean that if candidate who applied for the reserved seat did not really have the qualification for the reserved seat yet he could be allowed to go to the poll and get himself elected to the General seat if he gets the largest number of votes. Further it is necessary to know at the very inception whether he is qualified to fill the reserved seat because the deposit to be made by him depends upon that question. Therefore the view taken by the Returning Officer is clearly wrong and it is regretiable that he should have violated such clear provisions of the Act.

28. But the further question is whether this non-compliance of the provisions of the Constitution or the Act has materially affected the result of the election. Both under Section 100(1), clause (c) and Section 100(2), clause (c) the essential requisite for setting aside the election as wholly void or that the election of the returned candidate is void, is that the result of the election must have been materially affected. It is argued by the learned Advocate for the petitioner that Section 36(2) of the Representation of the People Act is a mandatory provision and that mere non-compliance of it would by itself result in the election being set aside. Whatever may be the provisions under the English Law, so far as Indian Law is concerned, there is no specific distinction made between the Mandatory and Directory provisions of the Act or Rules made thereunder. Section 100 of the Representation of the People Act makes it clear that non-compliance of the Act or Rules must be accompanied by the result of the election being materially affected before the election is declared to be void. Nanakchand in his treatise on "The Law of Election and Election Petitions in India" at page 426 says as follows:—"The Law in India and England is different in respect of the non-compliance with the Electoral Rules. In India, even if the petitioner succeeds in proving that there was a non-compliance with the provisions of law, it is further necessary to prove that such non-compliance materially affected the result of the election. The election cannot be said to be materially affected unless the irregularities which have occurred actually, turn the scale in favour of the returned candidate. It must be shown that but for the irregularities the returned candidate would not have secured a majority of votes. It is not enough to show that the result of the election might have been affected. It must be shown that the result of election was actually affected by non-compliance with rules and regulations". In *Parthasaradhi* vs. *Ramachandrarao* (6) His Lordship Chandrareddy J., after reviewing the entire case law—English and Indian—on the matter held as follows:—

"The propositions that emerge as a result of authorities are these:

1. The statutory requirements which are mandatory should be strictly obeyed but if they are directory substantial compliance therewith is sufficient.

2. Transgression of statutory requirements or rules made thereunder relating to election would not vitiate the election if the result of the election is not affected thereby unless there is a penal clause.

3. Success of a candidate at an election should not be lightly interfered with.

4. The burden of proving the grounds of attack against the election of a successful candidate is on the applicant seeking to set aside the election.

(6) 1955 *Andhra Law Times at page 766.*

5. The rights relating to election matter are not common law rights but are creatures of statute and the extent of these rights will have to be determined with reference to the statute.

6. The conclusion of an election Tribunal should not be on surmises but should be reached on definite and positive evidence".

The learned advocate for the petitioner relied upon two cases reported in the Indian Election Cases by Doabia One is *Mr E. Feud* v *Mr. C. E. Gibbon* reported in Volume I at page 247. This is a case where the nomination paper of the petitioner therein was rejected by the Returning Officer by not carrying out certain duties which are incumbent upon. Where the nomination paper of a candidate has been improperly rejected it is settled law that there is a presumption that the result of the election has been materially affected. The instant case is a case of acceptance without enquiry and not a case of rejection. So the case cited above has no application. The other case cited is *S. Meela Singh* vs. *Manoi Ram and others*, reported in Debia's Indian Election cases, Vol. II page 268. This is a case where the returned candidate was found by the Tribunal to be under 25 years of age and yet his nomination was accepted by the Returning Officer. It was a double member constituency. The petitioner (therein) who was a Scheduled caste candidate was defeated in the election. Ch. Maharchand, who was another Scheduled caste candidate was declared elected to the General seat and Ch. Manga Ram another scheduled caste candidate was declared elected to the reserved seat. The Tribunal held that the election of Ch. Mahar Chand was void because he was under-aged. The further question that arose was as to the effect of the election regarding the reserved seat on account of the improper acceptance of the nomination paper of Ch. Mahar Chand, who was also a Scheduled Caste candidate. The Tribunal held that the question whether or not the result has been materially affected is always a question of fact to be determined on the facts of each particular case. In that case no less than 16360 electors had exercised their franchise in favour of an unqualified candidate and to that extent they were deprived of their legitimate right to elect a candidate who was legally entitled to represent them. So the Tribunal held that this was sufficient to warrant a conclusion that the result of the election to the reserved seat had been materially affected. So neither of the two cases helps the petitioner in contending that irrespective of the question whether the result of the election was materially affected or not, the mere non-compliance of the provisions of the Act or the rules would vitiate the election. Under Section 100(2) clause (c) there is no penal clause for non-compliance of any statutory rules. On the other hand there is a positive provision that the non-compliance should be accompanied by the result of the election being materially affected. We, therefore, hold under issue 2, that though there was non-compliance of the provisions of Section 36(2) of the Representation of the People Act yet such noncompliance *simpliciter* would not materially affect the result of the election.

29. *Issue* 6.—As we stated above, this is a double member constituency contested by 11 candidates *viz.*, the petitioner, 1st respondent and 2nd respondent for the reserved seat and respondents 3 to 10 for the general seat. The following are the votes secured by each candidate as seen from Ex.B-49.

1st respondent	..	..	..	13,473
2nd respondent	..	..	..	8,774
Petitioner	..	..	..	4,286
3rd respondent	..	..	..	19,204
4th respondent	..	..	..	6,168
5th respondent	..	..	..	5,179
6th respondent	..	..	..	14,674
7th respondent	..	..	..	1,987
8th respondent	..	..	..	1,896
9th respondent	..	..	..	5,198
10th respondent	..	..	..	4,287

1st respondent was declared elected to the reserved seat and the 3rd respondent to the General seat. The point for determination is whether the result of the election of the 1st respondent is materially affected by the improper acceptance of his nomination paper. If the 1st respondent is not a member of the Scheduled Tribes, there is no doubt that the result of the election is materially affected because the 1st respondent is the returned candidate himself. But if he really is a member of the Scheduled Tribes, the result of the election would not have

been different merely because the Returning Officer committed a mistake in not deciding the objections raised at the time of scrutiny then and there. We have held on issue 1 that the 1st respondent belonged to the Scheduled Tribes and that, therefore, the acceptance of his nomination paper is not improper. The result of his election could not, therefore, have been materially affected. What can be said at the worst is that there was a proper acceptance of the nomination paper but in an improper way. Such cases are not covered by Section 100(1) clause (c) of the Act. If the Returning Officer had decided the objection on the day of scrutiny itself in favour of the 1st respondent, there would not have been any cause for complaint by the petitioner. The same reasoning would apply to the 2nd respondent also. There is a further point to be noted in the case of the 2nd respondent. The 2nd respondent is a defeated candidate. Even if the 2nd respondent were to be held as not belonging to the Scheduled Tribe, the result of the election would not be materially affected. Petitioner polled 4,286 votes and the 2nd respondent polled 8,774 votes. So the aggregate number of votes polled by both of them is 13,060. Even if we were to assume, which assumption is not warranted by law, that all the votes polled by the 2nd respondent would have been polled by the petitioner, if the 2nd respondent's nomination was rejected, yet the total number of votes that would have been polled by the petitioner would be 13,060 only whereas the 1st respondent who is the returned candidate got 13,473 votes. In that view also the result of the 1st respondent would not be materially affected. In *Vashist Narain Sharma* v. *Dey Chandra and others* (7), His Lordship observed as follows:—

"The learned Counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the Election lies upon the petitioner but he argues that the question can arise in one of three ways:

(1) Where the candidate who e nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes,

(2) where the person referred to above secured more votes, and

(3) where the person whose nomination has been improperly accepted is the returned candidate himself.

It is argued that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the (next) highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is materially affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion. But we are not prepared to hold that the mere fact that the wasted votes were greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the re ult of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candida'es While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand".

30. We therefore hold that the result of the election of the 1st respondent is not materially affected. As we have held that the 1st respondent and the 2nd respondent are members of Scheduled Tribes and that there was no improper acceptance of their nomination papers there is no question of the election being wholly void under Section 100(1) cl. (c).

31. *Issue* 4.—For the general seat the 3rd respondent is the returned candidate. The next best candidate for the general seat is the 6th respondent. The 6th respondent contends that respondents 1 and 2 are not members of the Scheduled Tribes, that their nomination papers have been improperly accepted and as a result of this the whole election including that of the 3rd respondent to the general seat has become void. We have held under issue 1 that respondents 1 and 2 are

(7) 1954 Supreme Court, page 513.

members of the Scheduled Tribes and that the acceptance of their nomination papers is proper. So Section 100(1) clause (c) had no application to the case. Further, so far as the general seat is concerned the result of the election cannot be said to be materially affected. It is argued for the 6th respondent that on account of the postponement of the decision about the qualification of respondents 1 and 2, there was a confusion in the minds of the electorate as to whether they were contesting the reseved seat or the general seat, that the Ist respondent and himself contested on the same political ticket and as the Returning officer was saying that if the Ist respondent were to be held as not belonging to the Schedule Tribe he would be treated as a condidate for the general seat, the electorate treated both the Ist respondent and the 6th respondent as candidates for the general seat and there was division of votes between the Ist respondent and the 6th respondent from amongst the sympathisers of the political party of respondents 1 and 6. This prejudice is purely speculative and conjectural. There is no positive evidence let in by the 6th respondent that there was any such confusion amongst the electorate. Further the Ist respondent was given the symbol intended for the reserved seat and the 6th respondent a separate symbol intended for the general seat and there could possibly be no confusion. As was held in *Vashist Narain Sharma* v. *Dey Chandra and other* (7) the Tribunal cannot hold that the election is materially affected unless specific evidence is adduced before it. It is unnecessary to decide in this case whether the election of the 3rd respondent to the general seat can be questioned in an Election petition filed by the defeated candidate for the Reserved seat as we have held that the acceptance of the nomination of the respondents 1 and 2 was proper and that in any view there was no prejudice caused to the candidates for the general seat in the election. We, therefore, hold that the election of the 3rd respondent is not void.

32. *Issue* 7.—In the result, the election petition fails and is dismissed with costs. We direct the petitioner to pay the 1st respondent Rs. 250 for his costs, inclusive of his Advocate's fee. We direct the petitioner and the other respondents to bear their own costs.

Pronounced in open Court, this 6th day of April 1956.

(Sd.) G. NAGIREDDY, *Chairman*,
(Sd.) C. NARASIMHACHARYULU, *Member (Judicial)*,
(Sd.) M. SITARAMAIAH, *Member (Advocate)*.

[No. 82/7/55/6611]
By Order,
P. S. SUBRAMANIAN, Secy.

(7) 1954 Supreme Court, page 513.

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